

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kevin Budig,

Complainant,

vs.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

David Bly and Bly Committee 20B,

Respondents.

On October 19, 2012, the above-entitled Fair Campaign Practices Complaint came before a Panel of three Administrative Law Judges: James E. LaFave (Presiding Judge), Jeanne M. Cochran, and William Marshall.

The matter was submitted to the Panel based on the record created at the September 27, 2012, Probable Cause hearing, the Prima Facie Determination and Probable Cause Order, and the written submissions of the Parties.¹ The OAH record closed on October 19, 2012.

STATEMENT OF THE ISSUE

Did Respondents violate Minn. Stat. § 211B.03 by using the word “re-elect” on lawn signs and other campaign material promoting Mr. Bly’s candidacy for the newly redrawn Minnesota House District 20B seat when Mr. Bly is not the incumbent?

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.03. The Panel concludes further that it is appropriate to assess Respondents a civil penalty of \$600.

¹ On October 5, 2012, the Respondents submitted a Waiver of Right to Hearing and Submission Regarding Penalty Imposed. On October 8, 2012, the Complainant submitted a Responsive Submission Regarding Penalty to be Imposed. On October 12, 2012, the Respondents submitted a Reply to the Complainant’s Response.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Respondent, David Bly, is a former member of the Minnesota House of Representatives for (then) District 25B. Mr. Bly served in the Minnesota House representing District 25B from 2007-2010. In 2010, Mr. Bly lost his re-election bid by 37 votes.

2. In 2012, as a result of redistricting, most of what was Minnesota House of Representatives District 25B became District 20B.²

3. Mr. Bly is a candidate in the November 2012, general election for the Minnesota House of Representatives District 20B seat.

4. Beginning in early September 2012, the Respondents and volunteers posted campaign lawn signs throughout the district promoting Mr. Bly's candidacy for House District 20B.

5. Respondents posted at least 93 lawn signs that used the phrase: "Re-elect David Bly." Some of these lawn signs were signs the Respondents had on hand from Mr. Bly's 2010 re-election effort. In addition, supporters of Mr. Bly may have posted old signs that they kept from his prior election bid.

6. Prior to Labor Day, the Respondents ordered 300 new lawn signs to promote Mr. Bly's candidacy. These new signs did not use the term "re-elect."

7. Between September 4 and September 25, 2012, the Respondents posted approximately 200 small lawn signs and 35 larger signs of the 300 new signs that were ordered.

8. The Complainant filed this Complaint with the Office of Administrative Hearings on September 24, 2012, alleging that the Respondents violated Minn. Stat. § 211B.03.

9. When the Respondents became aware of the Complaint, on or about September 25, 2012, the Respondents began replacing the lawn signs that used the term "re-elect."

10. During the September 27, 2012, probable cause hearing, Mr. Bly represented that he and his campaign committee would complete replacing the lawn signs that used the term "re-elect" by Sunday, September 30, 2012.

² Minnesota House District 20B includes portions of Rice and Le Sueur counties.

11. By September 30, 2012, the Respondents had replaced about 65 of the smaller lawn signs that used the term “re-elect” and covered over the “re” on 28 of the larger lawn signs.

12. On or about October 7, 2012, the Complainant located three or four campaign signs posted in the district that still bore the word “re-elect.”³

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.03 provides:

211B.03 Use Of The Term Reelect.

A person or candidate may not, in the event of redistricting, use the term “reelect” in a campaign for elective office unless the candidate is the incumbent of that office and the office represents any part of the new district.

3. The burden of proving the allegation in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.03 is a preponderance of the evidence.⁴

4. The Complainant has established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.03 by using the term “re-elect” on campaign material when Mr. Bly is not the incumbent.

5. It is appropriate to impose a civil penalty of \$600 against the Respondents for violating Minn. Stat. § 211B.03.

6. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

³ Complainant’s Responsive Submission Regarding Penalty, Exhibits A-F.

⁴ Minn. Stat. § 211B.32, subd. 4.

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.03, Respondents David Bly and the Bly Committee 20B shall pay a civil penalty of \$600 by December 31, 2012.⁵

Dated: October _24_, 2012

s/James E. LaFave

JAMES E. LAFAVE
Presiding Administrative Law Judge

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

s/William Marshall

WILLIAM MARSHALL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

⁵ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

MEMORANDUM

The Respondents, David Bly and Bly Committee 20B, do not dispute that they posted campaign signs in the District 20B promoting Mr. Bly's candidacy that used the term "re-elect" when Mr. Bly is not the incumbent. Mr. Bly represented Minnesota House of Representatives District 25B from 2007-2010. He lost his re-election bid in 2010 by 37 votes. In 2012, Minnesota House District 25B was redrawn as part of redistricting process and is now House District 20B.

Where new districts have been created as a result of redistricting, Minnesota Statutes § 211B.03 prohibits a candidate from using the term "re-elect" unless the candidate is the incumbent for at least a portion of the newly drawn district. While Mr. Bly represented a majority of the district from 2007-2010, he is not the incumbent in the November 2012 election for the newly created Minnesota House District 20B.

The Respondents have conceded that they violated Minn. Stat. § 211B.03 by posting lawn signs in support of Mr. Bly that used the term "re-elect." They assert, however, that once they were made aware of the Complaint on September 25, 2012, they immediately began replacing or modifying the signs. The Respondents assert that they took responsibility for the error and that by September 30, 2012, nearly all of the signs that used the term "re-elect" had been taken down or the term covered up.

The Respondents maintain that the violation on their part was inadvertent and promptly corrected. They contend that they were not aware of the statute at the time they posted the offending signs, but that once it was brought to their attention, they made every effort to correct the error. Moreover, the Respondents point out that use of the term "re-elect" was limited to the old campaign signs and was not used on other campaign materials, such as advertisements, mailings, literature, or t-shirts.

In response, the Complainant notes that a few signs using the term "re-elect" still remained posted in the district as of October 7, 2012. The Complainant asserts that that fact that some offending signs remain posted demonstrates that the Respondents have not been completely diligent in their efforts to identify and correct the signs. The Complainant urges the Panel to order the Respondents to immediately remove all remaining un-corrected signs and requests the Panel level the "absolute maximum penalty allowable by law" for each sign posted that used the term "re-elect."

After reviewing the record, the Panel concludes that Respondents' violation of Minn. Stat. § 211B.03 was negligent and may have had some impact on voters. All candidates are obligated to know and abide by the laws governing campaign practices. In fact, all candidates are provided a campaign manual with an annotated digest of the governing statutes at the time they file for office. Mr. Bly and his campaign committee should have been aware of the restrictions imposed by Minn. Stat. § 211B.03 with respect to using the term "re-elect" in newly redistricted legislative seats. That being said, the Panel is persuaded that the Respondents in this case made good faith efforts to promptly correct the signs once they were made aware of their mistake and the fact

that a few signs with the term “re-elect” may still have remained as of October 7, 2012, does not change this assessment.

Pursuant to Minn. Stat. § 211B.35, subd. 2, if the Panel determines that the violation alleged in the complaint occurred, the Panel may impose a civil penalty of up to \$5,000. The Panel declines to assess a civil penalty of \$5,000 per sign as urged by the Complainant, and instead concludes that a \$600 civil penalty is appropriate in this case.

J.E.L., J.M.C., W.M.